16.11.2022
Item No.4
Crt. No.654.
KB

FMA 138 of 2016

Rafika Sk. @ Rafika Sekh & Ors.
-Vs-
The Branch Manager, Cholamandalam M/s. General Insurance Co. Limited & Anr.

Mr. Jayanta Kumar Mandal
Mr. Sayantan Rakshit
... For the Appellants.

Mr. Debanjan Mukherjee
... For the Respondent.

This appeal is preferred against the judgement and award dated 27th July, 2015 passed by Learned Additional District Judge-cum-Motor Accident Claims Tribunal (Redesignated) Court, Bankura in M.A.C. Case No.14 of 2015 (MAC Case No.31 of 2014) granting compensation to the tune of Rs.4,68,500/- along with interest under Section 166 of the Motor Vehicles Act.

The brief fact of the case is that on 03.03.2014 at about 6.15 P.M. while the victim was going to Joykrishnapur from Beliara on his bicycle at that time a pick up van bearing No.WB-67A/3576 coming from the opposite direction at a very high speed dashed the victim on Beliara-Bishnupur pitch-road and as a result of which the victim sustained bleeding injuries and was taken to Sub-divisional Hospital at Bishnupur, where he succumbed to injuries. On account of sudden demise of the deceased victim, the claimants, being the legal heirs and dependants of the deceased victim, filed application under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs.4 lacs.

Upon consideration of materials on record, oral and documentary evidence adduced, on behalf of the claimants, the Learned Tribunal allowed compensation in favour of the claimants to the tune of Rs.4,68,500/- along with interest.

Being aggrieved by and dissatisfied with the impugned judgement and award, the claimants have preferred the present appeal.

Mr. Jayanta Kumar Mandal, Learned Advocate appearing on behalf of the appellants/claimants submits that the Learned Tribunal ought to have assessed the income of the deceased victim who was at the material point of time a cow seller @ Rs.4,000/- per month.

He further submits that the deduction towards personal living expenses of the deceased victim should be $1/4^{th}$ instead of $1/3^{rd}$ in view of the fact that the number of dependants of the deceased victim is four.

Furthermore, he submits that in view of the decision of the Hon"le Supreme Court passed in National Insurance Co. Ltd. vs. Pranay Sethi & others reported in

(2017) ACJ 2700 an amount equaling to 40% towards future prospect is to be taken into consideration.

He fairly submits that the multiplier adopted by the Learned Tribunal has been made correctly.

Mr. Debanjan Mukherjee, Learned Advocate for the Respondent No.1/Insurance Company submits that while awarding compensation the decision of the Constitution Bench of Hon'ble Supreme Court passed in Pranay Sethi's Case is to be followed.

With regard to the income of the deceased, it is found that the Learned Tribunal has assessed the income @Rs.3,000/- per month However, keeping in mind the prevailing price index at the relevant point of time in the year 2014 and also bearing in mind the catena of decisions of this Court, I am of the opinion that it will be appropriate to consider the income of the deceased victim @Rs.4,000/- p.m.

From the impugned judgement, it appears that the deceased victim at the time of accident was 33 years of age. Following observations of Hon'ble Supreme Court passed in ***Sarala Verma & Ors. vs. Delhi Transpaort Corporation & Anr. reported in (2009) 6 SCC 121*** a multiplier of 16 is to be adopted as has being rightly held by the Learned Tribunal.

As far as deduction towards personal and living expenses are concerned, it is found that the Learned Tribunal has taken into account 1/3rd of the annual income of the deceased towards his personal and living expenses. However, following observations of Hon'ble Supreme Court in Sarala Verma's Case (*supra)* as the deceased was married and had four dependants, namely the claimants herein the deduction towards personal and living expenses of the deceased should ¼th.

Furthermore, taking into account the age of the deceased to be 33 years and was self employed (cow seller), in view of the observation of Hon'ble Supreme Court in Pranay Sethi's case (*supra)* additional amount equaling to 40% of the annual income of the deceased should be taken into consideration towards future prospects.

Further it is found that the Learned Tribunal has assessed the general damages to the tune of Rs.9,500/-. However, in view of the observation of the Hon'ble Supreme Court in Pranay Sethi's case (supra) *the* general damages under the conventional heads, namely, funeral expenses, loss of consortium and loss of estate should be Rs15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

The calculation of compensation on the aforesaid aspects is detailed herein below.

Calculation of Compensation

Monthly Income : Rs.4,000/-

Annual Income : (Rs.4,000/-x12) = Rs.48,000/-

Add: Future Prospect (40%) : Rs.19,200/-

Rs.67,200/-

Less: 1/4th for personal and | Living expenses | Rs. 16,800/-

Rs.50,400/-

Multiplier - '16' x 16

Rs.8,06,400/-

Add:- General Damages Rs. 70,000/-
Loss of Estate –Rs.15,000/-
Loss of consortium-Rs.40,000/-
Funeral expenses- Rs.15,000/- Rs.8,76,400/-

Thus total amount of compensation comes to Rs.8,76,400/-.

It is informed that the amount of Rs.4,68,500/- granted by the Learned Tribunal has already been received by the claimants along with interest.

Accordingly, the claimants are entitled to a balance amount of Rs.4,07,900/- along with the interest @6% from the date of filing of the claim application till deposit.

The Respondent No.1/Cholamandalam M/s General Insurance Company is directed to deposit the balance amount of Rs.4,07,900/- along with interest @6% per annum from the date of filing of the claim application till deposit, by way of a cheque before the Learned

Registrar General, High Court, Calcutta within a period of five weeks from date.

Learned Registrar General, High Court, Calcutta shall disburse the aforesaid amount in favour of the claimants in equal shares after disbursing an amount of Rs.40,000/- to the appellant no.1 as spousal consortium.

The appellant no.1, being the mother and natural guardian of minor appellant nos. 2 to 4 shall receive the share of the minor and is directed to deposit the share of minors in a Fixed Deposit Scheme of any Nationalised Bank or Post Office till attainment of majority by the said minors.

The appeal is accordingly allowed.

The impugned judgement and award passed by the Learned Tribunal is modified to the aforesaid extent.

No order as to costs.

All applications, if any, are also allowed.

Interim order, if any, stands vacated.

Let a copy of this order alongwith the lower court records be sent to the learned tribunal.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bivas Pattanayak, J.)